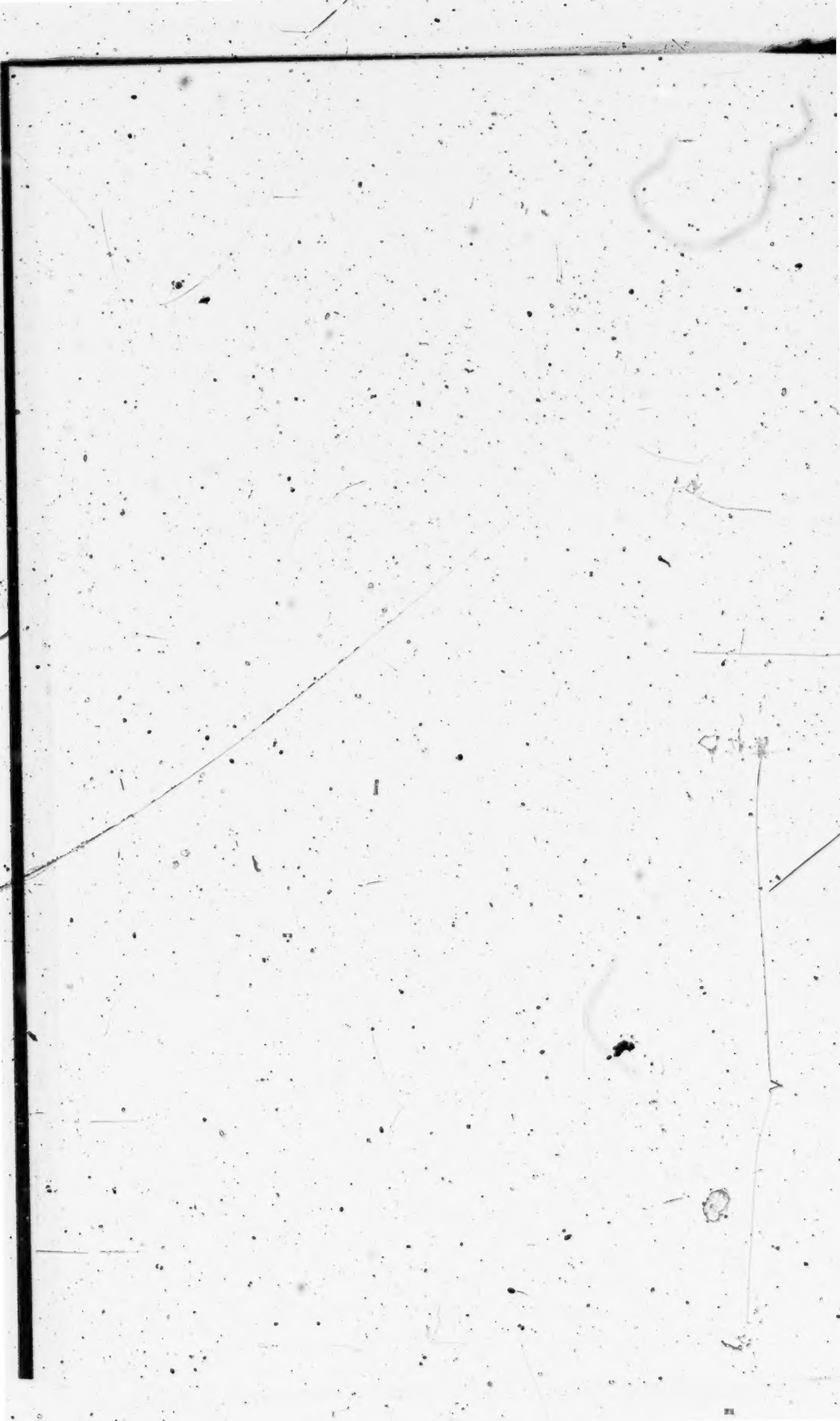

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 811

LEO H. HILL AND UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234,
Petitioners,

vs.

STATE OF FLORIDA EX REL. J. TOM WATSON,
ATTORNEY GENERAL

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
736 Bowen Building,
Washington 5, D. C.;
LESTER W. JENNINGS,
EDWIN C. COFFEE,
Law Exchange Building,
Jacksonville 2, Florida,
Counsel for Petitioners.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Summary statement of matter involved	1
Statement as to jurisdiction	4
Questions presented	5
Reasons relied on for allowance of writ	6
Brief in support of petition for writ of certiorari	11
The opinion of the court below	11
Jurisdiction	11
Statement of the case	12
Specification of errors	12
Argument	13
I. Section 4 and the injunction issued thereunder impose a previous general restraint on and prohibit the exercise of civil rights of assembly and speech	13
II. Sections 4 and 6 deny petitioners equal protection of the laws	22
III. Section 4 deprives of rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution	26
IV. Section 2(2), upon which Section 4 is dependent for operation, is so ambiguous as to deny due process of law	29
Conclusion	32
Appendix A	33
Appendix B	42

Table of Cases Cited

Alabama State Federation of Labor, et al. v. *Robert E. McAdory, et al.*, 18 Sou. (2) 810	24
Allen-Bradley v. *Wisconsin Employment Relations Board*, 315 U. S. 740	8, 29
Connally v. *Union Sewer Pipe Co.*, 184 U. S. 450	26
Cooley v. *Board of Wardens*, 12 How. (U. S.) 299	29

	Page
DeJonge v. *Oregon*, 299 U. S. 353	14
Eppinger & Russell Co., Matter of, 56 N.L.R.B. No. 226	28
Fiske v. *Kansas*, 274 U. S. 380	7, 17
Follett v. *Town of McCormick*, 64 S. Ct. 717	18
Frost v. *Corporation Commission*, 278 U. S. 515	8, 22, 24
Gibbons v. *Ogden*, 9 Wheat. (U. S.) 1	29
Grosjean v. *American Press Co.*, 297 U. S. 233	20
Hague v. *C.I.O.*, 307 U. S. 496	7, 14
Herndon v. *Lowry*, 301 U. S. 242	14
Hickey v. *Levitan*, 190 Wis. 646, 48 A. L. R. 434	26
Hines v. *Davidowitz*, 312 U. S. 52	8, 29
Lanzetta v. *New Jersey*, 306 U. S. 451	8, 29
Lovell v. *City of Griffin*, 303 U. S. 44	19
Martin v. *City of Struthers*, 319 U. S. 141, 145-6	16
McGoldrick v. *Gulf Oil Corporation*, 309 U. S. 414	29
Murdock v. *Pennsylvania*, 319 U. S. 105	7, 14
National Labor Relations Board v. *Hearst Publications, Inc.*, 64 S. Ct. 851, at 856	29
Near v. *Minnesota*, 283 U. S. 697	18
Schneider v. *New Jersey*, 308 U. S. 146	16
Smith v. *Cahoon*, 283 U. S. 553	26
Southern Railway v. *Green*, 216 U. S. 400	8, 22
State v. *Butterworth*, 104 N. J. L. 549, 142 A. 57, 58 A. L. R. 744	14
Thomas v. *Collins*, No. 14, U. S. Sup. Ct., October 1944, Term	28
Thornhill v. *Alabama*, 310 U. S. 88	20
United States v. *Cohen Grocery Co.*, 255 U. S. 81, 85 L. Ed. 516	30
United States v. *Reese*, 92 U. S. 214, 23 L. Ed. 563	8, 29
West Virginia v. *Barnette*, 319 U. S. 624	7, 14
Whitney v. *California*, 274 U. S. 357	14
Williams v. *Standard Oil Co.*, 278 U. S. 235	26

STATUTES CITED

Act of Congress of February 13, 1935, Sec. 237(b), 28 U. S. C. A., Sec. 344(b)	4
Const. Art. VI, cl. 2	29
National Labor Relations Act, 49 Stat. 449	15
Railway Labor Act, 48 Stat. 1185	24

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No.

LEO H. HILL AND UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234,
Petitioners,

vs.

STATE OF FLORIDA EX REL. J. TOM WATSON,
ATTORNEY GENERAL

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Justices of the Supreme Court of the United States:

The above named petitioners respectfully petition for a writ of certiorari to review a decision of the Supreme Court of Florida, rendered on November 28, 1944. (*Leo H. Hill, et al.* v. *State of Florida, et al.*) A copy of such decision is attached hereto as Appendix "A". Such decision affirmed a decree of the Circuit Court for Duval County, Florida.

Summary Statement of Matter Involved

This case was instituted by the filing of an action for injunction by the Attorney General of the State of Florida against Petitioner Leo H. Hill and Petitioner United As-

sociation of Journeymen Plumbers and Steamfitters of United States and Canada, Local 234 (hereinafter referred to as Local Union No. 234) (R. 1). Petitioner Hill is an officer of said Local Union and is also President of the Florida State Federation of Labor. The Petitioner Local Union No. 234 is a labor organization affiliated with the United Association of Journeymen Plumbers and Steamfitters of United States and Canada, A. F. of L., and operates in the City of Jacksonville, Florida (R. 1). The injunction sought to enjoin the Local Union from functioning as a labor organization and Leo H. Hill from acting as business agent or representative of said Local, unless and until they complied with the requirements of Chapter 21968, Laws of Florida, Acts of 1943 (hereinafter sometimes referred to by its popular name of H. B. 142). (R. 3). A copy of such Act is attached hereto as Appendix "B".

H. B. 142 is an Act "regulating the activities and affairs of labor unions, their officers, agents, members, organizers and other representatives." Under the Act unions and union representatives are licensed, and the activities of labor organizations, including their internal affairs, are regulated and circumscribed, as for instance, by the limiting of union initiation fees under Section 5, by the prescribing of methods of accounting under Section 7, and by placing restrictions on union elections, and upon picketing and striking under Section 9.

The injunction was premised upon and sought to enforce Sections 4 and 6 of the Act, and these are the only sections of the Act which are involved in this petition for certiorari. Section 4 of the Act requires all paid union representatives to obtain a license from the State of Florida as a condition of acting as a representative of any labor organization, and sets up a Board authorized to receive applications for and to issue such licenses. More specifically, a license must be obtained by a labor representa-

tive in order for him to act as a "business agent", which under Section 2(2) of the Act is defined as any person acting on behalf of any labor organization in "(a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees." Section 6 of the Act requires that labor organizations operating in the State file a statement containing the name of the organization, its location, and the names and addresses of its officials, and to pay an annual license fee as a condition of functioning in the State.

After the defendants had filed an answer (R. 4) admitting and denying certain allegations of the complaint and asserting that Sections 4 and 6 violated the State and Federal Constitutions in various respects as more particularly set forth under "Questions Presented" infra), the case was submitted to the Trial Court on a stipulation that the court would consider the case upon the pleadings (R. 16). Under the pleadings and stipulation the following minimum facts have been established: that the defendant, Local No. 234, United Association of Journeymen Plumbers and Steamfitters of United States and Canada, is a labor organization or labor union within the commonly understood meaning of the term, consisting of a voluntary association of working people banded together for their mutual aid and protection, and is and has been functioning as such in the city of Jacksonville, State of Florida; that the defendant, Leo H. Hill, is a duly authorized and paid representative of said labor organization, acting on behalf of such labor organization and its members in the State of Florida, among other things, in the soliciting and procuring from employees membership or authorization cards in labor organizations in the process of organizing and soliciting and receiving from employers privileges and benefits

for employees in the process of collective bargaining; that such defendants had not complied with the requirements of Sections 4 and 6 of H. B. 142 (R. —).

The Trial Court issued a final decree on June 22, 1942 under which it found that Sections 4 and 6 were valid constitutional enactments and under which the Court enjoined the defendant, Leo H. Hill, "from acting as business agent for said labor organization until he shall thereafter duly procure said license," and the defendant, Local No. 234, "from functioning and operating as a labor organization or labor union, until it shall thereafter duly make such report and pay said fee" (R. 18).

The defendants thereupon filed assignments of error, (R. 19), in which the constitutional questions were again raised, and appealed the case to the Supreme Court of Florida. After hearing argument the Supreme Court of Florida on November 28, in a unanimous decision, sustained the decree of the Circuit Court and declared that Sections 4 and 6 of the Florida Act did not violate any provisions of the State or Federal Constitution (R. 26).

Statement as to Jurisdiction

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237(b), 28 U. S. C. A., Section 344(b). This case is one in which the validity of Sections 4 and 6 of H. B. 142 is drawn into question upon the ground that such sections on their face and as construed in the opinion of the Supreme Court of Florida are repugnant to the Constitution of the United States in various respects as more particularly set forth under "Questions Presented" infra). The decision of the Florida Supreme Court was in favor of the validity of the sections in question. The case was finally disposed of by the Courts of Florida when

the Supreme Court of that State on November 28, 1944 rendered a decision upholding the decree of the Trial Court. the Supreme Court of that State on November 28, 1944, The constitutional questions as set below were raised in every posible stage of the proceeding below. The answer to the complaint raised such questions; these federal questions were again raised in the Assignment of Errors on appeal to the State Supreme Court; such federal questions were briefed and argued before the State Supreme Court; and that Court passed upon these federal questions in its opinion. A case or controversy clearly exists between the parties to this litigation, the State having permanently enjoined one petitioner from functioning as business representative, and the other petitioner from functioning as a labor organization, until the petitioners have complied with the requirements of Sections 4 and 6.

Questions Presented

The following federal questions, all of which were raised and argued before and passed upon by the Florida Supreme Court, are involved in the present petition for certiorari and review.

I. Do Sections 4 and 6 and the injunction issued thereunder restrain or condition the exercise by petitioners of civil rights freely granted under the First Amendment to the United States Constitution?[1]

II. Do Section 4 and the injunction issued thereunder restrain or condition any rights granted Petitioner Hill by Congress under the National Labor Relations Act?

[1] The manner in which Section 6 deprives petitioners of civil rights is not discussed in this petition or brief. An applicable discussion of this issue appears in petition and brief in No. 558 (*Alabama State Federation of Labor, et al.* v. *McAdory, et al.*, certiorari granted November 20, 1944.)

III. Do Sections 4 and 6 and H.B. 142 discriminate as between the class of labor associations and employer associations in general, and within the class of labor associations in particular by the exemption under Section 15 of associations of railway employees from the requirements of H.B. 142, thereby denying petitioners equal protection of the law?

IV. Is Section 2(2), containing the definition of "business agent", and upon which Section 4 is dependent for operation, so vague and indefinite as to fail to accord Petitioner Hill due process of law under the Fourteenth Amendment to the Federal Constitution?

All of these questions were answered by the Florida Supreme Court in favor of the validity of Sections 4 and 6, that Court, however, striking out that portion of Section 4 giving the issuing Board power to determine "whether public interest requires the issuance of the license."

Reasons Relied on for Allowance of Writ

Issues of the utmost importance to labor organizations, their members and their representatives throughout the country, are involved under this petition for review. The State of Florida has attempted to license, condition, and enjoin the right of individuals to act as representatives of labor organizations in the solicitation of members in the process of organization and the solicitation of privileges for members in the process of collective bargaining. The Supreme Court of Florida has expressly held that the activities of labor organizations, their members and their representatives, stand on exactly the same plane in respect to the right of the State to license and regulate, as do the activities of commercial enterprises and their representatives, and that the right of labor representatives to solicit for membership is no higher a right under the Federal Con-

stitution than the right of commercial representatives to solicit for sales. The Supreme Court of Florida, although asserting that the activities of Chambers of Commerce (including, presumably, the right of solicitation on their behalf) have as high a standing under the Constitution as do the activities of religious or political organizations, has denied petitioners' claim that the right of solicitation of representatives of labor organizations has such higher standing.

A decision by this Court of the issues presented under this decision will not only resolve similar issues which have arisen in other States which have enacted similar legislation, but will serve to define the allowable area of State control of labor organizations and their representatives and to determine whether the assemblage into and functioning in labor organizations by working people, and the solicitation by their representatives of members in the process of organizing, and of employee benefits in the process of collective bargaining, are rights protected as concomitant of the civil rights of assembly and speech, or are mere privileges which the State can withhold or regulate or condition as it sees fit.

As more fully set forth in the brief attached hereto, it is petitioners' principal contention that the determination of the court below that Section 4 and the injunction issued thereunder do not previously restrain or deny rights of assembly and speech is contrary to the holdings of this Court in such cases as *Fiske* v. *Kansas*, 274 U. S. 380; *Hague* v. *CIO*, 307 U. S. 496; *Murdock* v. *Pennsylvania*, 319 U. S. 105; and *West Virginia* v. *Barnette*, 319 U. S. 624.

In addition, constitutional rights of a less fundamental, although no less important, status are asserted to have been denied by the legislation in question, and the determination of the court below in favor of the validity of the legislation to be in conflict with the rationale of many decisions of this

Court. Thus, the determination of the Florida Supreme Court that the legislation, by excepting unions of railroad employees from its requirements, is not discriminatory and in violation of the equal protection of the laws clause of the Fourteenth Amendment, which determination is predicated on the irrelevant reason that such unions are covered by the Railway Labor Act, is in conflict with the decision of this Court in *Frost* v. *Corporation Commission*, 278 U. S. 515, and *Southern Railway* v. *Green*, 216 U. S. 400; the Florida Court's determination on the question of whether the legislation denies or withholds rights granted under the Wagner Act in violation of Article VI of the Federal Constitution is in conflict with the decision of this Court in *Hines* v. *Davidowitz*, 312 U. S. 52, and *Allen-Bradley* v. *Wisconsin Employment Relations Board*, 315 U. S. 740; and its determination on the question of whether Section 2 (2) defining the term "business agent" (required to obtain licenses under Section 4) is so ambiguous as to deny due process of law in violation of the Fourteenth Amendment is in conflict with the decisions of this Court in *Lanzetta* v. *New Jersey*, 306 U. S. 451, and *United States* v. *Reese*, 92 U. S. 214.

This case raises constitutional issues of a very substantial nature—issues which can be determined authoritatively only by this Court and which have not heretofore been precisely determined by this Court. Similar attempts to license representatives of labor organizations and to condition rights granted by Congress have been made in some six states in addition to Florida, and threatens to be passed in other states. An adjudication of the issues in this case by this Court is necessary in order to set at rest many of the difficult and perplexing constitutional questions that have arisen by reason of the various above described enact-

ments. An adjudication of the issues in this case is further necessary in order to resolve a conflict between the decisions of the highest courts of Colorado on the one hand and Florida and Alabama on the other hand in respect to the federal constitutional issues raised in this case, the Supreme Court of Colorado, on December 21, 1944, in *American Federation of Labor, et al.* v. *W. I. Reilly, et al.*, having decided such issues in favor of petitioners' contentions. The issues presented in this case are in substance the same as the issues presented to this Court in No. 14, October 1944 Term (*Thomas* v. *Collins*, certiorari granted December 31, 1944, argued May 1, 1944, further argued October 11, 1944) and in No. 558, October 1944 Term (*Alabama State Federation of Labor, et al.* v. *McAdory, et al.*, certiorari granted November 20, 1944). It is respectfully requested that if certiorari is granted under this petition, this case be assigned for argument with Case No. 558, above, and that for such purpose argument in Case No. 558 be deferred to permit argument of the two cases in succession.

WHEREFORE, Your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of Florida, commanding that court to certify and send to this Court for review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case, entitled "Leo H. Hill and United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local No. 234, Petitioners, vs. State of Florida, ex rel., J. Tom Watson, Attorney General," and that the judgment of the Supreme Court of Florida may be reviewed by this Honorable Court and that your petitioners may have such other and further

relief in the premises as to this Honorable Court may seem just and meet; and your petitioners will ever pray.

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
736 Bowen Building,
Washington 5, D. C.;
LESTER W. JENNINGS,
EDWIN C. COFFEE,
Law Exchange Building,
Jacksonville 2, Florida,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No.

LEO H. HILL AND UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234,

Petitioners,

vs.

STATE OF FLORIDA, EX REL., J. TOM WATSON, ATTORNEY GENERAL

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Opinion of the Court Below

The opinion of the Florida Supreme Court was filed on November 28, 1944, and has not been yet officially reported. A copy of such opinion is attached hereto as Appendix "B".

Jurisdiction

The statement concerning jurisdiction is set forth in the petition and is incorporated herein by reference.

Statement of the Case

The statement of the case appears in the petition and is incorporated herein by reference. There is no dispute concerning the facts involved, and such facts as are relevant are set forth in such statement and in the arguments that follow.

Specification of Errors

The Supreme Court of Florida erred in the following respects:

1. In holding that Sections 4 and 6 of H. B. 142 and the injunction issued thereunder do not impose a previous general restraint on or constitute a denial of the exercise of civil rights of assemblage and speech in violation of the First and Fourteenth Amendments to the United States Constitution.

2. In holding that Sections 4 and 6, applicable only to non-railroad unions under the exemption from the Act under Section 15 of railroad unions, are not discriminatory and in violation of the equal protection of the laws clause of the Fourteenth Amendment.

3. In holding that Sections 4 and 6 do not deprive of rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution.

4. In holding that Section 2(2) of H. B. 142, defining persons required to take out licenses under Section 4, is not so ambiguous as to deprive of due process of the law in violation of the Fourteenth Amendment to the United States Constitution.

Argument

I

Section 4 and the Injunction Issued Thereunder Impose a Previous General Restraint on and Prohibit the Exercise of Civil Rights of Assembly and Speech.

Section 4 of H. B. 142 attempts to license and regulate the right of petitioner Hill to act for and on behalf of labor organizations in the solicitation of members in the process of organizing, and in the solicitation of employee benefits in the process of collective bargaining. It is petitioner's contention that such section imposes a previous general restraint upon and impairs the exercise of his right to freedom of speech and assemblage.

The basis upon which the Florida Supreme Court held that Section 4 and the injunction issued thereunder do not deprive of constitutional rights is stated by that Court to be as follows:

> "Labor unions, like other trade, professional and business organizations are concerned with the business of making a living. They do not bother themselves with the things that concern religious bodies, chambers of commerce and like institutions. It is on this basis that we say they are subject to the police power, * * * The point is that labor organizations so vitally affect the public that they may be regulated in like manner as other organizations likewise engaged and their business agents may be subject to like regulation as insurance agents, real estate brokers, and others engaged in occupations that affect the public."

It is to this concept of the right of working people to assemble into and function as labor organizations and of labor representatives to solicit membership and employee

benefits on behalf of labor organizations as being entitled to no higher constitutional protection than the right of individuals to engage in commercial enterprise for profit and to solicit sales on behalf of such enterprise that petitioners take exception. The rights of free speech and assemblage as guaranteed by the First Amendment have been placed by the United States Supreme Court on a different level than property rights protected under the Fourteenth Amendment, and regulations which may be within the police power of the State to make with respect to those engaged in business for a profit are not valid with respect to those who exercise civil rights where such regulations curtail and limit the exercise of such rights. *West Virginia* v. *Barnette*, 319 U. S. 624.

It is petitioners' contention that trade unions, organized as they are out of the very necessities of the situation and representing in tangible form all of the inner desires and aspirations that have animated every grade and class of labor since the first days of working-class history, are to be recognized as democratic institutions—bulwarks of a free society, whose functions are extensions and corollaries of the basic rights of assembly and speech as exercised by the individual members of the organization, and whose existence depends on no mere sufferance or good will of any government, but has the same high standing as has the right of persons to assemble into political organizations for political purposes, or into religious organizations for religious purposes, or into scientific organizations for scientific purposes. See *State* v. *Butterworth*, 104 N. J. L. 549, 142 A. 57, 58 A. L. R. 744; *Whitney* v. *California*, 274 U. S. 357; *Hague* v. *C. I. O.*, 307 U. S. 496; *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Herndon* v. *Lowry*, 301 U. S. 242; *DeJonge* v. *Oregon*, 299 U. S. 353. See also *A. F. L.* v. *Reilly*, decided by the Supreme Court of Colorado on December 21, 1944.

Under Section 4 and the injunction issued thereunder, petitioner Hill has been enjoined, without first obtaining the permission of the State by procuring a license, from seeking by word of mouth or by pamphlet or any other form of written communication (1) to persuade an employee to sign a membership card in Local #234 or to sign a authorization card permitting Local #234 to act as the collective bargaining representative of said employee, and (2) to persuade an employer, during the process of collective bargaining, to extend any privilege to, or recognize or grant any right in, any employee whom Hill might represent. The prohibition is an absolute one applicable although the solicitation be restrained and the cause just. The prohibition is not made contingent upon the solicitation of fees or other sums of money.

In order not only to form labor organizations, but to enable labor organizations to flourish and function after having been formed, workers have designated by democratic processes from among their own ranks spokesmen—spokesmen to speak on their behalf to other employees, urging such employees to join in the common organization, and to solicit employers for privileges and benefits for employees in the process of collective bargaining. Solicitation for membership and participation in labor organizaton is no mere abstract exercise in liberty. Labor union members are permitted by law to utilize their organization as a medium of expression in collective bargaining only when they have succeeded in securing the adherence of a majority of their fellow workers in an appropriate unit. National Labor Relations Act, Sections 7 and 9. As a practical matter, it is necessary to submit application or membership cards to the National Labor Relations Board as evidence that the organization filing a petition under Section 9 of the National Labor Relations Act has a representation interest sufficient for the Board to act. Thus, the freedom of the

individual worker to speak effectively through his organization in collective bargaining is, in a very real way, dependent upon his freedom to solicit his fellow workers for authorization cards indicating their willingness to join with him. The fact that Section 4 prohibits solicitation of fellow workers to join only when an authorization or membership card is solicited is not a limitation which permits appellants nevertheless to exercise the essence of the right to solicitation; on the contrary, in order for solicitation into labor organizations to be at all effectve, it is obviously necessary that the solicitor be enabled to accomplish the very object of this solicitation by obtaining membership applications or representaton authorizations. Without this, the general right of solicitation would indeed be an empty one.

Similarly, the right of workers to gather together into labor organizations would be an empty one were their spokesmen denied the right to solicit the employer for employee benefits; the entire process of collective bargaining would be broken down ware the right of petition for redress of grievances made subject to the license of the State.

The following cases indicate the status of solicitation by labor representatives as a concomitant of the exercise of the civil rights of speech and assembly:

In *Schneider* v. *New Jersey*, 308 U. S. 146, solicitation by a representative of a labor organization for public support through the distribution of handbills was upheld as a concomitant of the right to free speech. That the exercise of the right of free speech through the distribution of literature in connection with labor organization falls within as carefully protected a realm of personal rights under the Constitution as the distribution of literature for religious purposes was again specifically declared by the Supreme Court in *Martin* v. *City of Struthers*, 319 U. S. 141, 145-6.

In *Hague* v. *C. I. O., supra,* the problem involved the exercise of these same rights not merely by picketing and handbills but further by the holding of meetings and solicitation of members. The opinion of Mr. Justice, now Chief Justice, Stone stated the issue before the Court to be the application of the guarantee of free speech and assembly under the First Amendment to protection against attempts by the public officers to prevent labor organizations "from holding meetings and disseminating information whether for the formation of labor organizations or for any other lawful purpose." (307 U. S. at 525.) Very specifically, the purpose of the meetings with which the city officials were enjoined from interfering was "to organize labor unions in various industries in order to secure to workers the benefits of collective bargaining with respect to betterment of wages, hours of work, and other terms and conditions of employment." (307 U. S. at 523.)

In *Fiske* v. *Kansas,* 274 U. S. 380, the Supreme Court directly held that the inducing or securing of persons to sign applications for membership in, or by issuing membership cards in, a certain "Workers' Industrial Union", a branch of the Industrial Workers of the World, was a right entitled to constitutional protection when peacefully engaged in. In that case the defendant had been convicted of "'knowingly and feloniously persuading, inducing and securing' certain persons 'to sign an application for membership in * * * and by issuing to' them 'membership cards' in a certain Workers' Industrial Union, 'a branch of and component part of the Industrial Workers of the World organization * * *'"; the case is an exact parallel to the instant case.

The case of *Herndon* v. *Lowry, supra,* specifically turned upon the right of individuals to solicit membership in political parties. That case held that the right of solicitation for membership in a political party was a concomitant

of the right of free speech. If the right to form, join and assist labor organizations for economic and social and political purposes stands on an equal level with the right to form, join and assist political organizations for political purposes, it can hardly be asserted that the right to solicit membership in labor organizations, which, as we have seen, must necessarily include the right to solicit membership or authorization cards therein, stands on a lesser plane than solicitation into political parties.

It might be argued that the constitutional protection of speech is not applicable in the present case because the statute is limited to solicitation by persons who receive "pecuniary or financial consideration" therefor. The receipt by petitioner of a pecuniary consideration in the form of a salary for his services no more operates to transmute his functions into a commercial category than does the payment of an income to a preacher or the payment of a salary to a newspaper editor. In *Murdock* v. *Pennsylvania, supra,* the Court stated:

> "Freedom of speech, freedom of the press, freedom of religion, are available to all, not merely to those who can pay their own way."

See also *Follett* v. *Town of McCormick,* 64 S. Ct. 717.

Similarly, the State of Florida can derive no constitutional support for its statute by characterizing appellant and other labor spokesmen as "business agents" and thereby seeking to place them under regulation as though their activities constituted business or commercial transactions. As the Supreme Court said in *Near* v. *Minnesota,* 283 U. S. 697:

> "Characterizing the publication as a business and the business as a nuisance does not permit an invasion of the constitutional immunity against restraint."

All that has heretofore been stated is, it is submitted, sufficient to indicate the fallacy of the State Court's assumption that the act of solicitation of members of labor organizations stands on the same footing and is to be gauged by the same standards, for the purpose of licensing and regulating, as does the act of solicitation of sales by commercial representatives. The organizations and associations into which millions of American working men and women have gathered for mutual and community improvement, for advancement of the welfare of all working men and women, politically, socially and economically, and the solicitation of membership therein, are obviously in no way analogous to commercial activities and commercial solicitation. As this Court stated in *Murdock* v. *Pennsylvania, supra:*

> "The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills."

Since petitioner Hill's right to solicit in the manner enjoined under Section 4 is a right finding protection under the First Amendment as a concomitant of the exercise of speech and assembly, such right cannot be licensed or its exercise unduly burdened even when there is rational basis for so doing under the state police power. See *Lovell* v. *City of Griffin*, 303 U. S. 44; *Schneider* v. *New Jersey, supra; Murdock* v. *Pennsylvania, supra.* As stated recently by the United States Supreme Court in *West Virginia* v. *Barnette, supra:*

> "In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and

those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a state to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave immediate danger to interests which the State may lawfully protect."

It is no defense to the statute to claim that the State will not deny the license on request. The assertion of the power to grant a license implies the assertion of the power to withhold it. If the State may insist that the rights of free speech, press and assembly can be exercised only on certain terms which go beyond the limits of the constitutional protection, it may insist on prohibiting the enjoyment of those rights altogether. The degree of burden is not the determining factor; it is the power which is asserted that is non-existent. *Grosjean* v. *American Press Company*, 297 U. S. 233. Even if the license might be secured for the asking, this would constitute no answer. *Thornhill* v. *Alabama*, 310 U. S. 88.

In any event, the license under Section 4 is not forthcoming upon request, and a great deal of discretion is reposed in the State on the issuance of such license. Such discretion has not been eliminated by the removal by the Florida Supreme Court of that portion of Section 4 stating that the license is conditioned, among other things, on the issuing board being "of the opinion that the public interest re-

quires that a license or permit should be issued to such applicant." Section 4 still provides for the suspension or revocation of licenses which presumably must be done in the discretion or good judgment of the Board having power to issue the licenses, and the section still provides for the filing of objections prior to the issuance of any license which, presumably, the Board would have jurisdiction and authority to pass upon. Finally, there is still a discretion lodged in a majority of the Board to find the applicant qualified pursuant to the terms of the Act, that is, to find that he has "good moral character" and has been a resident of the United States for a period of at least ten years prior to making application for a license, and under Section 10 the Attorney General is authorized to institute proceedings for the revocation or suspension of license. See *Schneider* v. *State, supra.*

In any event, the exercise of civil rights is unduly impaired and burdened by the provisions in Section 4 for the holding of applications for permits on file for a period of thirty days, between which time any persons may make objections to the issuing of such permit, and for the provisions for further hearings upon such objections if made. The delay thus caused, even if no objections are filed, would entirely defeat the organizational process which, of necessity, requires that the right of solicitation be exercised freely and at any time when the necessity for the same arises.

In this discussion concerning the unconstitutionality of Section 4, there is not involved any contention or suggestion that representatives of labor organizations are "above the law" or beyond regulation. In so far as free speech and press and assembly are concerned, the cases make clear the extent to which that regulation may go. In so far as a union or its representatives engage in any activity which can properly be considered criminal, they are today subject

to the provisions of the criminal law. It is this consideration which constitutes one of the cornerstones of American traditions of free speech. Laws may be passed to curb specific criminal conduct but not to curb the very exercise of the right of speech or assembly. See *DeJonge* v. *Oregon, supra*, and *Thornhill* v. *Alabama, supra.*

II

Sections 4 and 6 Deny Petitioners Equal Protection of the Laws.

In making classifications and imposing limitations upon particular groups, the State must act on the basis of a reasonable relationship to the object sought and not on the basis of any arbitrary and unreasonable classification, and all within a class must be treated equally. *Frost* v. *Corporation Commission*, 278 U. S. 515; *Southern Railway* v. *Green*, 216 U. S. 400.

Under H. B. 142 labor associations and their agents are licensed and subjected to regulation while employer associations and their agents, which associations are set up and established and function for the same purpose of representation on behalf of employers as labor organizations function on behalf of employees, are not licensed and regulated. Labor organizations on the one hand and employer associations on the other are parties to an economic struggle for a fair share of the joint product of capital and labor; these parties are in continuous relationship of either opposition or conciliation in the same field of industrial relationships. Why should not both parties to this economic struggle be treated alike?

Even more strikingly discriminatory is the fact that Sections 4 and 6 of the Act apply only to unions of non-railroad employees by virtue of the fact that Section 15 of the Act exempts associations of railway employees from

the Act "as long as they are regulated by any act or acts of the Congress of the United States." Thus, none of the four national independent Railroad Brotherhoods nor any of the nine national railroad labor unions which are affiliated with the American Federation of Labor nor any of the eleven A. F. of L. craft unions in the railroad shops having membership among railroad employees, nor the agents or representatives of any of these organizations, are required to be licensed and regulated by H. B. 142.

This exclusion is manifestly contrary to the principle that all within the class against which any particular legislation is directed—in this case labor organizations—must be treated alike. Under the present Act, one local of an international organization affiliated with the American Federation of Labor may not be required to be licensed or have its agents or have its internal affairs regulated where the members of that local organization are employed by railroads, while another local of that same international organization, operating under identical by-laws, will be required so to do where the members of that local or organization are not employed by railroads but by contractors, builders or manufacturers. An even more anomalous situation is created where, as in the case of the International Association of Machinists, the International Brotherhood of Boilermakers and many other craft unions, a number of their locals are mixed locals, that is, half or more of the members of the locals are employed by railroads, whereas the remaining half are employed by private contractors or builders. That half employed by railroads will be exempt; yet both halves operate under the same rules and often have one set of officers. In addition, even in the case of separate locals of railroad and non-railroad employees, the members are ordinarily organized and employees solicited for membership by a single representative acting on behalf of both.

The Florida Supreme Court, relying upon the language of the exemption and upon a decision of the Alabama Supreme Court in *Alabama State Federation of Labor, et al.* v. *Robert E. McAdory, et al.*, 18 Southern (2) 810, attempted to support the exclusion of unions of railroad employees on the theory that such organizations come under the Railway Labor Act. While this fact may constitute a difference between railroad unions and all other classes of unions, nevertheless this difference has absolutely no relevance to the purposes of the legislation for which the classification is proposed. Amenability of particular unions to the Railway Labor Act is no answer to the classification for the purposes of H. B. 142, for the reason that the field of employer-employee relationships regulated under the Railway Labor Act is not the same field at all that is regulated under the Florida Act; on the contrary, the Florida Act deals with a field which is in no way touched upon by the Railway Labor Act. The Supreme Court, quoting long-established authority, said in *Frost* v. *Corporation Commission*, 278 U. S. 515, at 522-523:

> "* * * Mere difference is not enough; the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act with respect to which the classification is proposed, and can never be made arbitrarily and without any such basis', * * *"

The Railway Labor Act does not attempt or purport to regulate the internal operations of railway labor organizations that may be subject to the Act; the Act merely imposes certain restrictions upon employer activity, provides for the establishment of collective bargaining units, and fosters collective bargaining relationships. The Florida Act deals with an entirely different subject matter. For instance, the Florida Act (Section 4) licenses and pre-

scribes qualifications for labor representatives, and the Railway Labor Act does not; the Florida Act (Section 5) limits union initiation fees, and the Railway Labor Act does not; the Florida Act (Section 6) licenses unions by requiring the filing of statements and taxes their right to function, and the Railway Labor Act does not; the Florida Act (Section 7) prescribes methods of internal accounting, and the Railway Labor Act does not; the Florida Act (Section 9) regulates internal rights of members, election to office, the charging and collection of dues and assessments, and other internal matters, and the Railway Labor Act does not; and the Florida Act (Section 11) prescribes procedures and process in suits by and against labor organizations, and the Railway Labor Act does not.

The State does not attempt to assert that there is any difference in the internal operations of labor organizations whose members are employed by railroads and labor organizations whose members are employed by other types of employers. On the contrary, the internal operations of all organizations affiliated with the State Federation of Labor, whether organizations of railroad employees or not, are substantially similar, if not identical. As a matter of fact, as previously mentioned, many local organizations of railroad employees in the State are affiliated with the same national or international union, such as the Boilermakers' and Plumbers' Unions, as are organizations of non-railroad employees which are subject to the Act, so that their respective operations would have to be identical and an absolute identity is achieved in the case of those local unions operating in the State, half of whose members are railway employees and half of whose members are non-railway employees, and where they are represented by the same business agents.

A business agent for the United Association of Journeymen Plumbers may, without obtaining a license, solicit

application and membership cards in a Plumbers' local of railroad employees, but that same agent, when making identical solicitations for membership in a local Plumbers' union of manufacturing or non-railroad metal trades employees, may not do so unless he has procured a license under Section 4. A business agent of a local of the Plumbers' Union may solicit for employee benefits in the process of collective bargaining with railroad shops, but may not do so if he is soliciting for benefits for employees engaged in the plumbing trade in a shipyard. It is respectfully submitted that this is discrimination in the highest degree and clearly denies petitioners equal protection under law.

The Act cannot be saved by striking Section 15 under the saving clause (Sec. 16). To eliminate Section 15 would be to extend the scope of the law to embrace labor organizations which the Legislature, in passing the statute, had by its very terms expressly excluded, and thus to disregard the rule that, where the excepting proviso is found unconstitutional, the substantive provisions which it qualify cannot stand. See *Connally* v. *Union Sewer Pipe Co.*, 184 U. S. 450, (reversed on other grounds); *Frost* v. *Corporation Commission, supra; Williams* v. *Standard Oil Co.*, 278 U. S. 235; *Smith* v. *Cahoon*, 283 U. S. 553; and *Hickey* v. *Levitan*, 190 Wis. 646, 48 A. L. R. 434.

III

Section 4 Deprives of Rights Granted and Protected Under the National Labor Relations Act In Violation of Article VI of the United States Constitution.

Section 4 operates to impose restraints or conditions upon the exercise of rights unconditionally granted by the National Labor Relations Act, and it interferes with the exercise of rights freely bestowed under such Act; as such

it must be declared illegal as being in conflict with federal legislation in a field in which Congress has paramount authority. Section 4 licenses the right of individual employees to solicit membership or authorization cards in the process of organization or to solicit for employes benefits or rights in the process of collective bargaining. These are rights specifically granted under the National Labor Relations Act, pursuant to a valid Congressional purpose of minimizing labor disturbances that might interfere with interstate commerce. As such, these rights must necessarily be exercised free from any restraint by the State; otherwise the broad federal objective might be forestalled or nullified by state legislation.

In order to effectuate its policy of freeing interstate commerce from the burdens of industrial strife and unrest, Congress found it necessary to confer upon employees the following unqualified rights:

> "Sec. 7. Employees shall have the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Section 9 of the National Labor Relations Act permits labor organizations or individuals to petition the National Labor Relations Board for certification of a particular labor organization as the exclusive collective bargaining representative of all the employees in an appropriate bargaining unit. As a matter of fact, Section 9 cannot be invoked without submitting to the Regional Director of any particular region authorization or membership cards as evidence in support of the petitioning union's claim that it represents sufficiently substantial number of employees to warrant the Board's ordering a hearing and calling an

election. The National Labor Relations Board has repeatedly recognized that the right to self-organization includes the right of employees, through organizers, to solicit membership in labor organizations, and the Act clearly contemplates that the services of organizers will be availed of by employees under modern industrial conditions. Section 4 not only imposes a license upon the the right of solicitation of membership and upon the right of soliciting benefits in the process of collective bargaining, but operates to unduly burden and encumber such right by reason of the delays incident to the obtaining of a license and by the reason of possible disclosure to employers of the names of organizers in specific organizational campaigns where secrecy might be necessary. (See brief of United States as amicus curiae in *Thomas* v. *Collins*, No. 14, October Term, 1944.)

That the requirements of Section 4 do in practical effect prevent engaging in activities and pursuing rights established under the National Labor Relations Act is no mere supposition; in the *Matter of Eppinger & Russell Company*, 56 N. L. R. B. No. 226, the National Labor Relations Board had before it a case in which a Florida employer had refused to bargain with a Florida union through a Florida business agent for the reason that such business agent had not obtained a license to act as the Union's representative under Section 4. The Board, in a unanimous decision, held that the employer in so refusing had violated the provisions of the National Labor Relations Act by denying rights established thereunder, and that the provisions of the Florida law relied upon by the employer to excuse his breach of the National Labor Relations Act "must yield before the paramount authority of Congress expressed in a valid and applicable federal law."

The applicable law is clear. When Congress passes legislation in the effectuation of powers conferred upon it by the

Constitution and in a field in which it has plenary power to assert the right to legislate, all state enactments inconsistent with the federal legislative plan are superseded, and any state legislation which conflicts with the federal legislation must fall. The appplication of this principle is not concerned with the nature of the power asserted by the State; although state regulation must be founded upon a valid exercise of its police power or upon other powers which are usually beyond challenge, nevertheless, when such regulation conflicts with federal regulation, the federal regulation must prevail. Const. Art. VI, cl. 2; *Gibbons* v. *Ogden*, 9 Wheat. (U. S.) 1; *Cooley* v. *Board of Wardens*, 12 How. (U. S.) 299; *Hines* v. *Davidowitz*, 313 U. S. 52; *McGoldrick* v. *Gulf Oil Corp.*, 309 U. S. 414. See also *National Labor Relations Board* v. *Hearst Publications, Inc.*, 64 Sup. Ct. 851, at 856, and *Allen-Bradley* v. *Wisconsin Employment Relations Board*, 315 U. S. 740.

IV

SECTION 2(2), UPON WHICH SECTION 4 IS DEPENDENT FOR OPERATION, IS SO AMBIGUOUS AS TO DENY DUE PROCESS OF LAW.

"Business agents" who fail to procure licenses under Section 4 are subjected to fine and imprisonment. While the State may create crimes, it is incumbent upon it in so doing to be sufficiently explicit so as to inform the public what conduct on the individual's part will render him liable to criminal penalties. A statute, and particularly a criminal statute, which is so vague, indefinite and uncertain as to its meaning that the things and matters prohibited and its application to particular persons are not reasonably ascertainable, is void under the due process clause of the Fourteenth Amendment. *Lanzetta* v. *New Jersey*, 306 U. S. 451; *United States* v. *Reese*, 92 U. S.

214, 23 L. Ed. 563; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, 85 L. Ed. 516.

Section 2(2) defines the term "business agent", and accordingly determines the application of Section 4 which requires the obtaining of licenses by "business agents."

Section 2(2) reads as follows:

> "The term 'business agent' as used herein shall mean any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any 'labor organization' in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees."

It is submitted that under this definition it is impossible to ascertain with any degree of certainty or definiteness just what classes of persons connected with labor organizations are or are not obliged to obtain licenses under Section 4, or under what conditions they are obliged to obtain such licenses.

What is meant by the term "pecuniary or financial consideration?" Is a worker who, as often happens in the closing days of an organizing campaign or campaign for the election of a bargaining representative, takes time off from his job for a day or two and is reimbursed by the union for his loss of time a "business agent" under this definition when during the day or two that he might be absent from work he procures application cards? Is an attorney who is paid a fee by a labor organization, and who writes a letter to an employer in regard to a grievance on behalf of the union, a "business agent"? Is the receipt of wage increases through the process of collective bargaining the receipt of a "pecuniary or financial consideration" which would require any person receiving any

such increase to obtain a license before soliciting or receiving from any employer any right or privilege for employees?

Further, what is meant by the term "work permits"? No definition of the term is attempted in the Act, and it is submitted that the term has not achieved such a meaning in common parlance as to indicate clearly and unequivocally to the average citizen just what is intended.

Finally, the remaining language of subsection (a) is completely ambiguous. What constitutes an "evidence of rights granted or claimed in, or by, a labor organization"? Certainly, a contract or any other legal document drawn up by an attorney for a labor organization for a fee would seem to come under this clause, and accordingly attorneys can henceforth act for labor organizations, draw up bills of sale, contracts, deeds, or any other written documents, only at the peril of being criminally prosecuted for a violation of H. B. 142 if they have not applied for and received licenses as business agents. A right granted, or claimed, in or by a labor organization may be any one of a thousand things; the term is so indefinite as to make impossible even citing a hypothetical example of what might be attempted.

Subsection (b) is equally ambiguous. What is meant by "receiving from an employer any right or privilege for employees"? A "right" or "privilege" in respect to what? And what particular type of a "right" or "privilege" out of the thousands known finding a status as such under the common law? How is it possible for an educated layman or even an attorney, let alone a union member who may not have had the opportunity to get through high school, to determine just what is intended by this clause?

It is respectfully submitted that petitioner is not required to speculate at his peril concerning the meaning of these very ambiguous subsections.

Conclusion

It is respectfully submitted that, under the decisions cited and discussed in the foregoing arguments, it is clear that petitioners have been denied and deprived of rights granted and secured under the Constitution of the United States, and that the decision of the Florida Supreme Court should be reversed.

Respectfully submitted,

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
736 Bowen Building,
Washington 5, D. C.
LESTER W. JENNINGS,
EDWIN C. COFFEE,
Law Exchange Building,
Jacksonville 2, Florida.
Counsel for Petitioners.

APPENDIX A

IN THE SUPREME COURT OF FLORIDA, JUNE TERM, A. D. 1944

EN BANC

DUVAL COUNTY

LEO H. HILL and UNITED ASSOCIATION OF JOURNEYMEN PLUMERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234, *Appellants,*

vs.

STATE OF FLORIDA, ex rel., J. TOM WATSON, Attorney General, *Appellee*

Opinion filed November 28, 1944.

An appeal from the Circuit Court for Duval County, Miles W. Lewis, Judge Jennings & Coffee, Joseph A. Padway (Washington, D. C.) and Herbert S. Thatcher (Washington, D. C.), for Appellants.

J. Tom Watson, Attorney General; Howard S. Bailey and R. W. Ervin, Jr., Assistant Attorneys General, for Appellee.

TERRELL, *J.:*

The Legislature of 1943 enacted Chapter 21968, Sections Four and Six of which are as follows:

> "Section 4. No person shall be granted a license or a permit to act as a business agent in the State of Florida, (1) who has not been a citizen of and has not resided in the United States of America for a period of more than ten years next prior to making application for such license or permit. (2) Who has been convicted of a felony. (3) Who is not a person of good moral character, and every person desiring to act as a business agent in the State of Florida shall before doing so obtain a license or permit by filing an

application under oath therefor with the Secretary of State, accompanied by a fee of one Dollar. There shall accompany the application a statement signed by the president and secretary of the labor organization for which he proposes to act as agent, showing his authority to do so. The Secretary of State shall hold such application on "file for a period of thirty days during which time any person may file objections to the issuing of such license or permit. After the expiration of the thirty day period, regardless of whether or not any objections have been filed, the Secretary of State shall submit the application, together with all information that he may have including any objections that may have been filed to such application to a Board to be composed of the Governor as Chairman, the Secretary of State, and the Superintendent of Education. If a majority of the Board shall find that the applicant is qualified, pursuant to the terms of this Act (*and are of the opinion that the public interest requires that a license or permit should be issued to such applicant*), then the Board shall by resolution authorize the Secretary of State to issue such license or permit, same shall be for the calendar year and shall expire on December 31 of the year for which issued unless sooner surrendered, suspended, or revoked.

Section 6. Every labor organization operating in the State of Florida shall make a report in writing to the Secretary of State annually on or before July first. Such report shall be filed by the Secretary or business agent of such labor organization and shall be in such form as the Secretary of State may prescribe, and shall show the following facts:

(1) The name of the labor organization;
(2) The location of its office;
(3) The name and address of the president, secretary, treasurer, and business agent.

At the time of filing such report is shall be the duty of every such labor organization to pay the Secretary

of State an annual fee therefor in the sum of One Dollar."

Appellants declined to comply with the provisions of the act as thus quoted, contending that it was invalid. This suit was brought by the Attorney General to restrain Local 234 from functioning as a labor organization and Leo H. Hill from acting as its business agent pending compliance with the law. A motion to dismiss the bill was overruled. An answer interposed various defenses predicated on the State and Federal Constitutions. On final hearing, Section Six was upheld as valid in toto. As to Section Four, the Court deleted the words "and are of the opinion that the public interest requires that a license or permit should be issued to such applicant", and upheld it in all other respects. This appeal is from the decree so entered.

It appears that the trial court deleted the provision from Section Four because it vested arbitrary power in the Board and was in conflict with the standard of qualification prescribed for one applying for a license to be a business agent of a labor union rendering it unconstitutional. We approve this holding.

It is first contended that Sections Four and Six as quoted and deleted are void because they restrain the exercise of appellants' civil rights guaranteed by the First Amendment to the Federal Constitution.

In essence, Section Four of Chapter 21968 hereafter referred to as House Bill 142, creates a State Licensing Board composed of the Governor, Secretary of State, and the State Superintendent of Public Instruction. All business agents for labor organizations must secure a permit from the State Licensing Board and as a prerequisite for securing such permit they must furnish proof that they have been (A) a citizen of the United States for more than ten years next preceding their application for the permit, (B) have not been convicted of a felony, (C) must be of good moral character and Section Six requires them to accompany the application with a fee of One Dollar.

Similar regulations are imposed on attorneys, physicians, barbers, insurance agents, real estate brokers, nurses,

beauty parlor operators, civil engineers, architects, liquor dealers, and many others engaged in gainful occupations. All such requirements have been upheld in the interest of the public health, morals, safety, welfare, and prosperity of the people. They are imposed on the theory that the business engaged in by the applicant vitally affects the public welfare and that the public is entitled to the protection they afford.

Such regulations have been imposed under the police power of the State and have been generally upheld for reasons so academic that it would harly seem necessary to cite authority to support them. Appellant's answer to this is that they are like religious associations, law and order leagues, citizens committees and chambers of commerce, and should, like these, be exempt from such regulations. Our attention is directed to no similarity between labor unions and the last named institutions and as we shall later show, there is no basis to grant them the same exemption.

Appellants contend that these regulations unduly restrict their freedom of speech, free press, and free assembly. This contention overlooks the fact that none of these guaranties are absolutes but are subject to reasonable police regulation in the interest of the public. It would be difficult to name an organization that more vitally affects the public or one in which the public is more vitally interested than the organizations of labor. Their activities and their public relations of late years have frequently pushed the war and every other human relation off the front page. To hold that their agents may not be regulated in the manner prescribed here would amount to a reversal of our holding with reference to every other kindred relation. National Labor Relations Board vs. Jones & Laughlin Steel Corp., 301 U. S. 1, 57 Sup. Ct. 615, 81 L. Ed. 893; Riley vs. Sweat, 110 Fla. 362, 149 So. 48; Page vs. State Board of Medical Examiners, 141 Fla. 294, 193 So. 82; State ex rel Munch vs. Davis, 143 Fla. 236, 196 So. 491; State Board of Funeral Directors vs. Cooksey, 147 Fla. 337, 3 So. (2nd) 502.

Appellants also contend that Sections Four and Six of House Bill 142 unduly restrict their right to assemble as

working men, to solicit membership in labor organizations and that the fee charged is an undue restraint on these and other civil rights. They rely on Murdock vs. Pennsylvania, 319 U. S. 105, 63 Sup. Ct. 870, 87 L. Ed. 1292, and that line of cases to uphold this contention.

The gist of this contention is that they are no different from religious, fraternal, and charitable organizations and should enjoy the same immunity from license or other restraints. The answer to this contention is that religious, fraternal, and charitable organizations are in terms immunized from license taxes and other regulations on the theory that they minister to the spiritual, moral, educational and other necessities of the community. They are very largely gratuitous, are not imbued with the profit aspect and there is every reason why they should be so immunized while none of the reasons that immunize them have been shown to be attached to labor organizations.

The Federal Supreme Court has repeatedly upheld acts regulating different phases of employer and labor relations in the interest of the common good. National Labor Relations Board vs. Electric Vacuum Cleaner Co., 120 Fed. (2nd) 611, reversed on other grounds in 315 U. S. 685, 62 Sup. Ct. 846, 86 L. Ed. 1120; American Steel Foundries vs. Tri-City Central Trades Council, 257 U. S. 184, 42 Sup. Ct. 72, 66 L. Ed. 189. In the briefs of counsel for the State, our attention is directed to acts by at least eleven other states, Alabama, Kansas, Arkansas, Wisconsin, South Dakota, Idaho, Texas, Michigan, Pennsylvania, Massachusetts, and Minnesota regulating some phase of labor relations. Some of these acts are very similar to the one in question but others are different in some respects. The case of Ex parte Thomas, 141 Tex. 591, 174 S. W. (2nd) 958, is illuminating on the point because in most features, the Texas act is similar to ours and it upholds the power of the State to regulate labor unions under its police power. Casual review of the cases cited would seem to settle the controversy beyond question.

The requirement of Section Six to file annual reports giving (1) the name of the labor organization, (2) the location of its office, and (3) the name and address of its

president, secretary, treasurer, and business agent is supported by similar requirements in acts of Kansas, Texas, Wisconsin, Idaho, South Dakota, and Alabama. The Alabama Act was upheld by the Alabama Supreme Court in State Federation of Labor vs. Robert E. McAdory, — Ala. —, 18 So. (2d) 810. The opinion treats in a very illuminating manner this and other phases of labor union regulation.

The charge that House Bill 142 is new legislation hardly merits consideration. In a democracy like ours, regulatory legislation never precedes but always follows a felt necessity or demand for it. No social system could long endure that does not remain responsive to the need for change and flexible enough to modify its legislative patterns to compass the changes. Every form of social organization must be constantly amended to meet new techniques and changing circumstances. Call it progress or liberalism as you will, the instant we lose the incentive, we become static and ultimately perish.

As to the charge of One Dollar for a business agent's license, appellants contend that this is in reality a tax which amounts to a restraint on their civil rights, that is to say the right of workers to assemble for mutual aid and protection, to circulate and disseminate information, to form and join unions and to solicit others to join them.

We see no merit to this contention. The fee of One Dollar is nothing more than a charge to defray the cost of the service. Neither section Four or Six in any way affects the right of workmen to assemble for mutual aid, to circulate information or to organize and invite others to join them. These are all rights this Court has repeatedly recognized. Paramount Enterprises, Inc. vs. Mitchell, 104 Fla. 407, 140 So. 328.

We have reviewed all the cases cited by appellants in support of their contention as to civil rights but their main reliance appears to be on Thornhill vs. Alabama, 310 U. S. 88, 60 Sup. Ct. 736, 84 L. Ed. 1093; Schneider vs. Irvington, 308 U. S. 147, 60 Sup. Ct. 146, 84 L. Ed. 155; Lovell vs. Griffin, 303 U. S. 444, 58 Sup. Ct. 666, 82 L. Ed. 949; Hague v. C. I. O. 307 U. S. 496, 59 Sup. Ct. 954,

83 L. Ed. 1423; Cantwell vs. Connecticut, 310 U. S. 296, 60 Sup. Ct. 900 84 L. Ed. 1213; Near vs. Minnesota, ex rel Olson, 283 U. S. 697, 51 Sup. Ct. 625, 75 L. Ed. 1357; Am. F. of L. vs. Swing, 312 U. S. 321, 61 Sup. Ct. 568, 85 L. Ed. 855, and like cases. These cases have all been reviewed in connection with the case at bar as well as in former decisions of this Court and we think are directed to statutes or ordinances prohibiting the distribution of literature without a special permit depending on the arbitrary discretion of the mayor or some other officer. For this or some similar reason, they are not in point with the case at bar.

It is quite true that in Thornhill vs. Alabama, first cited in the preceding paragraph, the Court brought "picketing" within the protection of the Bill of Rights but so far as we have been able to find, organizing labor unions, collective bargaining, boycotting, striking, and other labor practices have been so immunized. It may be that conditions will arise in the future in which other labor practices should be so protected but such a case must await the appropriate conditions. With the facts before us, it certainly would be a tortured construction of the Bill of Rights to hold that other lines of endeavor are subject to police regulation but that labor unions are free from any species of regulation.

Individual freedoms guaranteed by the Constitution did not become such by chance. They were designed as a buffer to personal worth; they have no relation to institutions but they raised man to his full statute, put sand in his "guts" and raised him to a level with kings. Freedom of speech, for example, was first employed to guarantee members of parliament that they would not be called on the carpet by the king for any discussion they participated in on the floor of the house regarding public affairs. The right was later extended to the citizen as to all political discussion and when our Constitution was adopted, it was first included as one of the fundamental rights available to every citizen.

Labor unions, like other trade, professional and business organizations are concerned with the business of making

a living. They do not bother themselves with the things that concern religious bodies, chambers of commerce and like institutions. It is on this basis that we say they are subject to the police power, but can it be reasonably contended that Sections Four and Six of House Bill 142 impose any unreasonable burden on them? Section Four requires nothing more than a showing of the Americanism, good moral character, and freedom from felony of their business agents and Section Six requires them to furnish the Secretary of State their name, place of business, and the name and address of the president, secretary, treasurer, and business agent. Literally thousands of persons and institutions over the country are required by State and Federal Governments to furnish similar information and many of them much more. In fact, the requirement of Section Six goes only to information that is common knowledge in the community where the labor union is located and most of it goes to the public on the communications it sends out.

We have long since gotten away from the idea that human relations which affect the public welfare can be transacted in a moral vacuum. Good moral character and sound Americanism is the very basis on which democratic institutions rest. It permeates every aspect of human relations from the White House down to the most juvenile community enterprise. A boy cannot get into a marble game if he does not play the game in recognition of the moral that his companions have rights that he must respect and the same moral thread runs through business relations, labor relations, and oll other relations that affect the public. Democratic institutions would go to pot quicker than it would take to tell how except for the moral standard on which they are pitched. It is past understanding that any one who plies his trade, business, or profession for a living should seriously contend that he is footloose in a moral universe with carte blanche to do as he pleases when others in like situation are bound by every restriction the Bill of Rights will permit. In this state of the law, it would seem idle to say that one's civil rights were unduly hobbled to require him to show his good moral

character that he had been exposed to the American way of life for ten years, that he had not committed a felony, where he is conducting his business, and who is conducting it for him.

The sole test for the exercise of the police power is reasonableness. True, the Legislature cannot under the guise of the police power arbitrarily invade personal or property rights or interfere with private business but if the statute has some rational relation to the safety, health, morals, or general welfare and the means employed may be reasonably said to accomplish the desired purpose, it is within the scope of the police power. The means adopted by the act must be reasonably necessary. They must be reasonable in their effect on the person, must not be oppressive and must not be designed for the annoyance of any particular person or class.

It is next contended that Sections Four and Six of House Bill 142 invade the field covered by the National Labor Relations Act and consequently it is non enforceable.

This contention proceeds on the presumption that the National Labor Relations Act preempts the field of labor regulation and removes any power on the part of the states to do so. If appellants' contentions were true, the National Labor Relations Act rather than the Act in question would go down under the Constitution. National Labor Relations Board vs. Jones & Laughlin Steel Corp., 301 U. S. 1, 57 Sup. Ct. 615, 81 L. Ed. 893; Wisconsin Labor Relations Board vs. Fred Rueping Leather Co., 228 Wis. 473, 279 N. W. 673. In both these cases it was held that the power of Congress to regulate labor relations rested on the commerce clause while the power of the State rested on the police power and that the State power was supreme when no undue burden was laid on interstate commerce. Unless interstate commerce is obstructed, the Federal Act may not be called into operation.

It is next contended that House Bill 142 is invalid for discrimination in that Section 15 exempts associations of Railway Employees from its provisions contrary to the equal protection clause of the Fourteenth Amendment.

On this point, it is sufficient to say that all the state acts herein referred to make similar exemptions and none of them that have been assaulted for this reason have been stricken down. In fact, it seems to be a classification common to acts of this kind and one the Legislature was empowered to make. Alabama State Federation of Labor vs. McAdory, — Ala. —, 18 So. (2nd) 810; A. F. of L. vs. Reilly, 7 Labor Cases, 65, 168.

In our treatment of House Bill 142, we have observed the line followed by counsel in their briefs. In other words, Sections Four and Six have generally been treated together. It is true that their provisions overlap but in the main, Section Four applies to the business agent and Section Six applies to the Union or organization. A better practice would have been to recognize this distinction in the opinion but it would have resulted in much duplication and a more tedious discussion. The point is that labor organizations so vitally affect the public that they may be regulated in like manner as other organizations likewise engaged and their business agents may be subject to like regulation as insurance agents, real estate brokers, and others engaged in occupations that affect the public. The purpose of the regulation is not punic but to preserve the democratic process and bring to the knowledge of the individual or group regulated that it has an obligation to the public that rises above its personal or group interest.

Other questions argued have been considered but we find no reversible error.

Affirmed.

Buford, C. J., Brown, Chapman, Thomas, Adams and Sebring, J. J. concur.

APPENDIX B

Chapter 21968—(No. 334)

House Bill No. 142

AN ACT to Regulate the Activities and Affairs of Labor Unions, Their Officers, Agents, Members, Organizers, and Other Representatives; Making Provision for Suits

and Process By and Against the Same; Requiring Certain Fees; Declaring Certain Public Policy of the State; Giving Certain Definitions and Recognizing Certain Rights as Belonging to Employees; Exempting Certain Labor Organizations from its Provisions; Providing Certain Penalties and Punishment for Violations; With a Saving Clause in Case of Unconstitutionality; and Repealing All Laws and Parts of Laws in Conflict Herewith.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Because of the activities of labor unions affecting the economic conditions of the county and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected. The right to work is the right to live.

It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

Section 2. The following terms, when used in this Act, shall have the meaning ascribed to them in this section:

(1) The term "labor organization" shall mean any organization of employees, local or subdivision thereof having within its membership residents of the State of Florida, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions or grievances of any kind relating to employment.

(2) The term "business agent" as used herein shall mean any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any "labor organization" in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization,

or (b) in soliciting or receiving from any employer any right or privilege for employees.

Section 3. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 4. No person shall be granted a license or a permit to act as a business agent in the State of Florida, (1) who has not been a citizen of and has not resided in the United States of America for a period of more than ten years next prior to making application for such license or permit. (2) Who has been convicted of a felony. (3) Who is not a person of good moral character, and every person desiring to act as a business agent in the State of Florida shall before doing so obtain a license or permit by filing an application under oath therefor with the Secretary of State, accompanied by a fee of One Dollar. There shall accompany the application a statement signed by the president and secretary of the labor organization for which he proposes to act as agent, showing his authority to do so. The Secretary of State shall hold such application on file for a period of thirty days during which time any person may file objections to the issuing of such license or permit. After the expiration of the thirty day period, regardless of whether or not any objections have been filed, the Secretary of State shall submit the application, together with all information that he may have including any objections that may have been filed to such application to a Board to be composed of the Governor as Chairman, the Secretary of State, and the Superintendent of Education. If a majority of the Board shall find that the applicant is qualified, pursuant to the terms of this Act and are of the opinion that the public interest requires that a license or permit should be issued to such applicant, then the Board shall be resolution authorize the Secretary of State to issue such license or permit, same shall be for the calendar year and shall ex-

pire on December 31 of the year for which issued unless sooner surrendered, suspended, or revoked.

Section 5. Labor unions or labor organizations shall not charge an initiation fee in excess of the sum of Fifteen Dollars ($15.00), provided that initiation fees in effect on January 1st, 1940 may be continued.

Section 6. Every labor organization operating in the State of Florida shall make a report in writing to the Secretary of State annually on or before July first. Such report shall be filed by the secretary or business agent of such labor organization and shall be in such form as the Secretary of State may prescribe, and shall show the following facts:

(1) The name of the labor organization;
(2) The location of its office;
(3) The name and address of the president, Secretary, treasurer, and business agent.

At the time of filing such report it shall be the duty of every such labor organization to pay the Secretary of State an annual fee therefor in the sum of One Dollar.

Section 7. It shall be the duty of any and all labor organizations in this State to keep accurate books of accounts itemizing all receipts from whatsoever source and expenditures for whatsoever purpose, stating such sources and purposes. Any member of such labor organization shall be entitled at all reasonable times to inspect the books, records and accounts of such labor organization.

Section 8. Any employee who is a member of any labor organization, who because of services with the armed forces of the United States, during time of war or national emergency, has been unable to pay any dues, assessments, or sums levied by any labor organization, shall not hereafter be required to make such back payments as a condition to reinstatement in good standing as a member of any labor organization to which he belonged.

Section 9. It shall be unlawful for any person:

(1) To interfere with or prevent the right of franchise of any member of a labor organization. The right of franchise shall include the right of an employee to make complaint, file charges, give information or testimony concerning the violations of this Act, or the petitioning to his union regarding any grievance he may have concerning his membership or employment, or the making known facts concerning such grievance or violations of law to any public officials, and his right of free petition, lawful assemblage and free speech.

(2) To prohibit or prevent any election of the officers of any labor organization.

(3) To participate in any strike, walk-out, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; Provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection 3 of this section without a secret ballot.

(5) To charge, receive, or retain any dues, assessments or other charges in excess of, or not authorized by, the constitution or by-laws of any labor organization.

(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.

(7) To solicit membership for or to act as a representative of an existing labor organization without authority of such labor organization to do so.

(8) To make any false statement in an application for a license.

(9) For any person to seize or occupy property unlawfully during the existence of a labor dispute.

(10) To cause any cessation of work or interference with the progress of work, by reason of any jurisdictional dis-

pute, grievance or disagreement between or within labor organizations.

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in Section 3 of this Act, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

(12) To picket beyond the area of the industry within which a labor dispute arises.

(13) To engage in picketing by force and violence, or to picket in such a manner as to prevent ingress and egress to and from any premises, or to picket other than in a reasonable and peaceable manner.

Section 10. An action may be commenced by the Attorney General of the State on complaint of any interested party, for the suspension or revocation of the license of any business agent for the violation of any of the provisions of this Act. Said action shall be commenced only in the circuit court of the county of residence of such business agent or of the county in which such violations occurred. Such action shall be heard by the court without a jury and the rules of equity procedure shall apply in such proceedings. The court may suspend such license for such time as in its judgment is deemed best, or may revoke such license.

Section 11. Any labor organization may maintain any action or suit in its commonly used name and shall be subject to any suit or action in its commonly used name in the same manner and to the same extent as any corporation authorized to do business in this State. All process, pleadings, and other papers in such action may be served on the president or other officer, business agent, manager or person in charge of the business of such labor organization. Judgment in such action may be enforced against the common property only of such labor organization.

Section 12. All fees collected by the Secretary of State hereunder shall be paid to the State Treasurer and credited to the general fund.

Section 13. Except as specifically provided in this Act, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this Act be so construed as to invade unlawfully the right to freedom of speech.

Section 14. Any person or labor organization who shall violate any of the provisions of this Act, shall, upon conviction thereof, be adjudged guilty of a misdemeanor and be punished by a fine not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

Section 15. All railway labor organizations and members thereof shall be exempt from all of the provisions of this Act as long as they are regulated by any Act or Acts of the Congress of the United States.

Section 16. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 17. This Act shall take effect immediately upon its becoming law.

Approved by the Governor June 10, 1943.

Filed in Office Secretary of State June 10, 1943.